Supreme Court, U. S.
FILED
JAN 2 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-861

CONNELLY CONTAINERS, INC.,
Petitioner,

v.

LAKE UTOPIA PAPER LIMITED,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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January 2, 1980

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Question Presented

Was the court of appeals correct in unanimously affirming the judgment of the district court which confirmed an arbitration award in favor of Lake Utopia Paper Limited?

Statement of the Case

Petitioner Connelly Containers, Inc. ("Connelly") seeks to have this Court review the decision of the United States Court of Appeals for the Second Circuit which unanimously affirmed the judgment of the district court confirming a commercial arbitration award in favor of Lake Utopia Paper Limited ("Lake Utopia"). For purposes of these proceedings, Connelly's statement of the facts is essentially correct.

ARGUMENT

THE PETITION PRESENTS A SINGLE FACTUAL QUESTION AND ADVANCES NO VALID REASON FOR GRANTING CERTIORARI

The sole question presented to this Court by Connelly's petition is a factual one, whether the district court "abused its discretion in exercising its fact finding powers in interpreting the forum selection clause" of the contract entered into by these parties. (Petition at 7.) The application of Section 9 of the United States Arbitration Act, 9 U.S.C. § 9 (1976), and Connelly's claim—stated, but unexplained—of a conflict between the lower courts' opinions and this Court's decisions in *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974) and *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), both turn upon Connelly's dispute with the district court's finding that the parties agreed in their contract that confirmation of an arbitration award and judgment thereon might be sought in the district court. This factual question was correctly decided by the lower courts and meets none of the considerations governing review on certiorari. *See* Sup. Ct. R. 19.

Paragraph 11 of the contract between Lake Utopia and Connelly provides:

> "ARBITRATION: Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered by the highest court in New Brunswick, having jurisdiction." (Petition at 3.)

Rule 46(c) of the Commercial Arbitration Rules of the American Arbitration Association, which as Connelly admits was validly incorporated by the parties into their contract and was in existence at the time the arbitration proceeding was commenced and at all times thereafter, provides:

> "Parties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any Federal or State Court having jurisdiction thereof." (Appendix A hereto.)

Because the contract incorporated Rule 46(c) and also provided for possible entry of judgment in New Brunswick, Lake Utopia clearly had a choice of courts to which it could resort to confirm the arbitration award and it properly applied for confirmation to the district court, which had jurisdiction over the arbitration as one involving "commerce" within the meaning of 9 U.S.C. §§ 1 and 2 (1976).

The venue of confirmation proceedings is governed by Section 9 of the United States Arbitration Act, which provides in pertinent part:

> "If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made." 9 U.S.C. § 9 (1976).

The Southern District of New York was the district within which the arbitration took place and was additionally a possible forum for confirmation proceedings encompassed within the intent of the parties in their contact. Connelly's sole argument against this conclusion is that, although the parties had agreed that judgment upon an award *may* be entered in New Brunswick, they really had intended that judgment *must* be entered there exclusively. The district court quite properly rejected this argument. *See* Petition, Appendix A at A-4. Connelly reaches its curious conclusion only by ignoring the explicit language of Paragraph 11 of the contract and the equally explicit language

of Rule 46(c) of the Commercial Arbitration Rules of the American Arbitration Association.

Connelly's vague references to a possible conflict between the lower courts' decisions in this case and this Court's decisions in *Scherk v. Alberto-Culver Co., supra,* and *The Bremen v. Zapata Off-Shore Co., supra,* are equally wide of the mark. The cases are simply inapposite. In *The Bremen,* for example, the relevant clause provided:

> "Any dispute arising must be treated before the London Court of Justice." 407 U.S. at 2.

This Court found that the clause construed in *The Bremen* was "clearly mandatory and all-encompassing" (407 U.S. at 20), whereas in the instant case the district court found that the parties had clearly allowed themselves a choice. In *Scherk v. Alberto-Culver Co., supra,* the issue was whether the parties' dispute would be settled by arbitration, pursuant to an arbitration clause in the contract, or by a court; this Court held that the arbitration clause would be enforced. Neither case addresses the question presented here, and neither is in conflict with the decisions below.

The petition for a writ of certiorari involves a simple factual question that was correctly decided in the courts below. There is no conflict with the decisions of this Court and no important question of federal law which should be decided by this Court.

CONCLUSION

No questions raised in the petition make review by this Court appropriate, and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Appendix

Appendix A

Rule 46(c) of the Commercial Arbitration Rules of the American Arbitration Association

Parties to these Rules shall be deemed to have consented that judgment upon the aribitration award may be entered in any Federal or State Court having jurisdiction thereof.